

# ITEL

## Pullman

November 1, 1989

9-310A011

### Itel Rail Corporation

55 Francisco Street  
San Francisco, CA 94133  
(415) 984-4000  
(415) 781-1035 Fax

RECORDED BY 15642-7 FILED NOV 1989

NOV 6 1989 - 12 00 AM

INTERSTATE COMMERCE COMMISSION

Hon. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Re: Schedule No. 12 to Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation and Hartford and Slocomb Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Schedule under Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation, as successor in interest to both Itel Rail Corporation and Itel Railcar Corporation, and Hartford and Slocomb Railroad Company, which was filed with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Hartford and Slocomb Railroad Company (Lessee)  
P.O. Box 2243  
Dothan, Alabama 36302

This Schedule adds to the Lease Agreement forty-four (44) 50', 70-ton, Plate C, XM boxcars bearing reporting marks HS 5500-5543.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*  
Patricia Schumacker  
Legal Assistant

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 12

THIS SCHEDULE NO. 12 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of May 5, 1988 as amended between ITEL RAIL CORPORATION and as lessor ("Lessor") and HARTFORD AND SLOCOMB RAILROAD COMPANY as lessee ("Lessee") is made this 27th day of October, 1989.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 12, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description of Cars	Car Reporting Marks and Numbers	No. of Cars
XM	70-Ton, Plate C 50, '10'-sliding door boxcars	HS 5500 - 5543	44

3. A. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for five (5) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Initial Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month, for a period not to exceed sixty (60) calendar months (each such calendar month an "Extended Term"). Lessor may terminate the Agreement at any time during the Initial Term or any Extended Term as to some or all of the Cars

described in this Schedule by providing not less than ten (10) days' prior written notice to Lessee.

4. When a Car has been remarked, it shall be moved to the railroad lines of Lessee at no cost to Lessee. Lessee agrees to pay the rent set forth in the Agreement notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereinunder. In order to move the Cars to Lessee's railroad line and to ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.
5.
  - A. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee hereby authorizes Lessor to subscribe to the car hire data exchange tape, Train 62 Junction Advices, and the Train 65, 67 and 80 Advices with respect to the Cars and agrees to execute any documents necessary to implement such authorization. If, for any reason, Lessor does not subscribe to Train 65 and 67 Advices, Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to Cars interchanged to and from Lessee's railroad line.
  - B. If Lessee's reporting marks are on any Cars, then Lessee shall provide Lessor with the UMLER passkey necessary for registering such Cars and shall authorize Lessor to receive the UMLER Fleet Tape. Lessee shall, within thirty (30) days of notification that Lessor has paid a car repair bill for equipment bearing reporting marks not leased to Lessee by Lessor or for which Lessee is responsible for the cost of maintenance as set forth in the Agreement (or any other agreement between Lessor and Lessee), Lessee shall reimburse Lessor for any amount paid.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except those delegated to Lessee as set forth in Subsection 5.B. of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from:  
1) ad valorem tax assessments on the Cars; and 2) any

assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

**8. Rent**

**A. Definitions**

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any Extended Term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the July 1989 edition of The Official Railway Equipment Register, as may be updated from time to time.
- (iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (iv) "Base Revenues" is defined as the cash amount equal to the Revenues which the Cars would have earned in the aggregate if the Cars had been on

railroad lines other than Eligible Lines for  
of the hours that such Cars  
were subject to the Agreement with each Car  
travelling per day during such  
calendar quarter ("Quarter") or portion thereof.

- (v) "Initial Loading" of a Car shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is first received on Lessee's lines.

B. Lessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 8.C. hereinbelow upon the Initial Loading of such Car; provided, however, that Lessor shall retain and be entitled to all Revenues earned by such Car after such Initial Loading, including any Revenues due Lessee pursuant to Subsection 8.C.(ii) ("Lessee's Revenue Share"), until the total amount of Lessee's Revenue Share retained by Lessor shall have become equal to Lessor's expenses for remarking and delivering such Car to Lessee ("Delivery Expense").

C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:

- (i) In the event Revenues earned in any Quarter or applicable portion thereof are equal to or less than the Base Revenues, Lessor shall retain a sum equal to of the total Revenues.

- (ii) In the event Revenues earned in any calendar quarter or applicable portion thereof exceed the Base Rent, Lessor shall retain an amount equal to the Base Revenues plus of all Revenues in excess of the Base Revenues and Lessee, subject to Subsection 8.B., shall receive of all Revenues received in excess of the Base Revenues.

D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount

of revenues actually received or earned for such Cars.

- (ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.
  - (iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.
- E. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Cars.
- F. If any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 3.B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car travelling miles per day.
- G. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such Final Calculations, retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under this Section 8, Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amounts due both parties pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
9. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

10. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

HARTFORD AND SLOCOMB  
RAILROAD COMPANY

BY: Robert Kiehnle BY: E. J. Furber III  
TITLE: Vice President and Treasurer TITLE: President  
DATE: October 27, 1989 DATE: 10-10-89

**EXHIBIT A  
CERTIFICATE OF DELIVERY DATE**

Exhibit A to Schedule No. 12 dated as of \_\_\_\_\_  
between **ITEL RAIL CORPORATION** ("Lessor") and **HARTFORD AND SLOCOMB  
RAILROAD COMPANY** ("Lessee"), to Lease Agreement as amended, dated  
as of May 5, 1988.

**HS Reporting Marks and Number**

**Date Delivered**

**ITEL RAIL CORPORATION**  
Authorized Representative

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

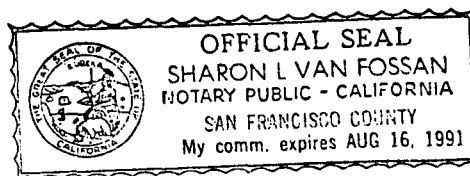
EXHIBIT B  
Running Repairs: Boxcars

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Brake Beams and Levers	
Truck Springs	
Door Hardware (Not Replacement of Door)	

STATE OF CALIFORNIA       )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO )

On this 27th day of October, 1989, before me personally appeared Robert Kiehle, to me personally known, who being by me duly sworn says that such person is Vice President and Treasurer of Itel Rail Corporation, that the foregoing Schedule No. 12 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF ALABAMA       )  
                                      ) ss:  
COUNTY OF HOUSTON )

On this 10 day of October, 1989, before me personally appeared C. F. Fischer, III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company that the foregoing Schedule No. 12 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joan Thompson  
Notary Public